



Agenda Date: 5/24/04

Agenda Item: 5B

STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.bpu.state.nj.us

WATER AND WASTEWATER

IN THE MATTER OF THE APPLICATION OF)
MIDDLESEX WATER COMPANY FOR)
APPROVAL OF A FRANCHISE BETWEEN)
MIDDLESEX WATER COMPANY AND THE)
CITY OF PERTH AMBOY)

DECISION AND ORDER

DOCKET NO. WM03100765

(SERVICE LIST ATTACHED)

BY THE BOARD:

Middlesex Water Company (Middlesex or Company), a duly organized public utility of the State of New Jersey subject to the jurisdiction of the Board of Public Utilities (Board), is engaged in the business of collecting, treating and distributing water for service on a retail basis to customers in various municipalities located in Middlesex County, Monmouth County and Union County and, on a contract basis, for sale or for treatment and pumping to various municipalities in Middlesex County and Monmouth County.

On October 1, 2003, Middlesex filed a petition seeking approval, pursuant to N.J.S.A. 48:2-14 and N.J.A.C. 14:1-5.5, of a temporary franchise granted to the Company by the City of Perth Amboy (City or Perth Amboy) in the form of Resolution R-321-8/03 dated August 27, 2003. The Resolution: (1) indicates the agreement of the Company and the City for a Temporary Franchise Agreement for the purpose of allowing Middlesex to provide water and fire protection services to Reconserve of New Jersey, Inc. (Reconserve), which intends to relocate its business from Santa Monica, California to 1250 Amboy Avenue in Perth Amboy, also designated as Block 457, Lots 1.06 and 1.07; and (2) authorizes the execution of a Franchise Agreement on behalf of the City. Said Agreement was signed by representatives of Perth Amboy and Middlesex on September 11, 2003. Section 11.1 of the Agreement provides that:

The franchise granted hereunder shall be a temporary franchise, and shall not continue in existence indefinitely, subject to termination, at the option of the City, in the event either of the following occurs:

- (a) If Reconserve sells or subleases the Reconserve Property at any time during the existence of this Agreement; or
- (b) If the City extends its water mains, pipes or other apparatus supplying water close enough to serve the Reconserve Property thereby providing the necessary water and/or fire protection directly to Reconserve.

After appropriate notice, a hearing in this matter was held on March 24, 2004, at the Board's Newark offices before Edward D. Beslow, Esq., the Board's designated Hearing Examiner. At the hearing, the Company relied on the testimony of Ronald F. Williams, its Vice President of Operations and Chief Operating Officer.

Mr. Williams testified that Reconserve, a recycling company that processes unused bakery products into animal food, plans to construct a building on the franchise site that would be served with domestic and fire protection services by Middlesex. Reconserve's need for water, which is anticipated to reach a level of approximately 230,000 gallons per year, is not related to its food processing operations but for cleaning equipment and sanitary purposes. Based on the Company's existing tariffs approved by and on file with the Board, Mr. Williams calculated that the annual revenues realized by Middlesex for services to Reconserve would amount to \$1,000 for the domestic service and about \$5,000 for fire protection service. He further estimated that the Company's capital costs associated with providing service to Reconserve will be \$10,000, which includes \$6,000 for a fire service, \$3,000 for a domestic service, \$700 for a fire detector check and \$300 for a meter.

Mr. Williams indicated that while Perth Amboy operates its own water system, the City's mains are approximately 2,000 feet from the property to be occupied by Reconserve. He further stated that Middlesex, on the other hand, has an existing 30-inch main that actually crosses a corner of the site and could provide water service to the property without the need for any main extensions. Because of the location of the Company's main and in order to eliminate an economic hardship to Reconserve that would result if it were required to connect to the City's facilities, Mr. Williams testified that Perth Amboy granted Middlesex a temporary franchise to serve that can be terminated pursuant to the Agreement between Perth Amboy and Middlesex.

By letter dated April 16, 2004, the Division of the Ratepayer Advocate (Ratepayer Advocate) filed comments with the Board relating to the Company's franchise petition. The Ratepayer Advocate does not oppose Board approval of the petition and requested that the Board include certain conditions that have become standard in similar Board Orders. Said provisions have been incorporated herein as conditions #1 and #2 below.

The Board would note that temporary franchises are not commonplace and in other situations might well be problematic. However, the Board is satisfied that the subject temporary franchise is justifiable and can be supported by the specific facts presented in this matter such as: (1) the City and the State will benefit by the relocation of Reconserve's business to New Jersey; (2) Reconserve will avoid the substantial expense that would be required if an extension of the City's water system solely to serve Reconserve were necessary; (3) the provision of domestic and fire protection services to Reconserve by Middlesex will only require the installation of service connections thereby eliminating the possibility of future stranded costs; and (4) the conditions that would allow the temporary franchise to be terminated are limited and reasonable, and have been agreed to by Perth Amboy and Middlesex.

Based on the record in this matter, the Board HEREBY FINDS that the temporary franchise granted in the form of Perth Amboy Resolution R-321-8/03, issued on August 27, 2003, is necessary and proper for the public convenience and properly conserves the public interest. The Board FURTHER FINDS that Middlesex has demonstrated that it has sufficient capacity and possesses all necessary facilities in order to adequately serve the anticipated water and fire protection needs of Reconserve. Accordingly, the Board, pursuant to N.J.S.A. 48:2-14,

HEREBY APPROVES the temporary franchise granted by the City of Perth Amboy to Middlesex Water Company to provide water and fire protection service to the property to be occupied by Reconserve of New Jersey, Inc., as specifically set forth in the Resolution and Temporary Franchise Agreement. The Board believes that it is appropriate to view the temporary franchise as a conditional franchise of indefinite duration subject to the conditions of the Agreement entered into by Middlesex and Perth Amboy. In addition, our approval is subject to the following conditions:

1. Approval of this municipal Resolution does not constitute Board approval of any costs or expenses associated with this franchise. Any determination as to the appropriateness or reasonableness of the costs and expenses related to the franchise, including, but not limited to, the cost of construction, contributions in aid of construction, the cost of connection or any related capital improvements, and the allocation of such costs and expenses, shall be made in an appropriate subsequent proceeding;
2. This Order shall not affect or in any way limit the authority of this Board or of this State in any future petition with respect to rates, franchises, services, financing, accounting, capitalization, depreciation or any other matters affecting Middlesex, including the validity of any future termination of this conditional franchise;
3. In the event that Reconserve abandons its plan for relocation to the proposed franchise site, Middlesex shall notify the Board within thirty (30) days of being so informed; and

4. Middlesex shall notify the Board within 15 days of receiving notice that the conditional franchise which is the subject of this matter is being terminated pursuant to the terms set forth in the Temporary Franchise Agreement between Middlesex and Perth Amboy.

DATED: **5/25/04**

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

JEANNE M. FOX
PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

(SIGNED)

CONNIE O. HUGHES
COMMISSIONER

(SIGNED)

JACK ALTER
COMMISSIONER

ATTEST:

(SIGNED)

KRISTI IZZO
SECRETARY

**In the Matter of the Application of Middlesex Water Company
for Approval of a Franchise Between Middlesex Water Company
and the City of Perth Amboy**

BPU DOCKET NO. WM03100765

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